

DEC 29 2004

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**FACSIMILE TRANSMITTAL SHEET**

TO: Examiner R.W. Chiu  
FIRM: UNITED STATES PATENT AND TRADEMARK OFFICE  
GROUP ART UNIT: 3711  
SERIAL NO.: 10/056,893  
FILING DATE: January 24, 2002  
FAX NO.: (703) 872-9306  
FROM: Glen L. Nuttall  
CLIENT CODE: LOCHT.116A  
TOTAL NUMBER OF PAGES: - 5 - (INCLUDING COVER SHEET)  
DATE: December 29, 2004 TIME: \_\_\_\_ P.D.T.  
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MESSAGE: Enclosed for filing in the above-identified patent application is a Renewed Petition to Withdraw Holding of Abandonment.

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DEC 29 2004

PATENT

Case Docket No. LOCHT.116A

Date: December 29, 2004

Page 1

In re application of : Thomas J. Lochtefeld  
App. No. : 10/056,893  
Filed : January 24, 2002  
For : SURF TOY ACTION FIGURE AND  
SIMULATED SURFING GAME  
Examiner : R.W. Chiu  
Art Unit : 3711

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(Date)



Glen L. Nuttall, Reg. No. 46,188

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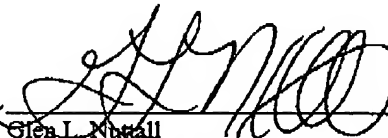
P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Transmitted herewith in the above-identified application is:

- (X) A renewed Petition to Withdraw Holding of Abandonment.
- (X) The present application qualifies for small entity status under 37 C.F.R. § 1.27.
- (X) Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.
- (X) PLEASE SEND ALL CORRESPONDENCE TO:  
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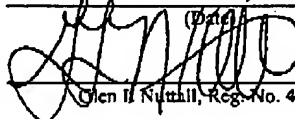
## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Thomas J. Lochtefeld  
Appl. No. : 10/056893  
Filed : January 24, 2002  
For : SURF TOY ACTION FIGURE  
AND SIMULATED SURFING  
GAME  
Examiner : R. W. Chiu  
Group Art Unit : 3711

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December 29, 2004

  
Glen H. Nizhnik, Reg. No. 46,188**RENEWED PETITION TO WITHDRAW HOLDING OF ABANDONMENT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicant hereby requests the Commissioner to withdraw the Notice of Abandonment mailed by the Office on August 12, 2004, to enter Applicant's amendment and response filed June 1, 2004, and to issue a Notice of Allowance in the above-captioned application.

Based on the file history, the relevant facts are as follows:

1. The Patent and Trademark Office mailed a final Office Action on December 29, 2003;
2. Applicant timely mailed an amendment and response to the Office Action on June 1, 2004;
3. The Patent and Trademark Office mailed a Notice of Abandonment on August 12, 2004;
4. Applicant mailed a Request to Withdraw Notice of Abandonment on September 14, 2004;
5. The Patent and Trademark Office mailed a Decision on Petition on November 1, 2004. In the Decision, the Office acknowledged that Applicant's June 1 response was timely filed, but held that the June 1 response was not a proper response to the final Office Action. More specifically, the Decision stated that the Supervisory Patent Examiner (SPE) of Art Unit 3711 held that Applicant's June 1 response "does not render the application

Appl. No. : 10/056893  
Filed : January 24, 2002

allowable, and raises new issues.” Unfortunately, there was no detailed explanation from the SPE as to what new issues were raised by the June 1 response.

Applicant contends that the June 1 response placed the application in condition for allowance, and Applicant respectfully requests the SPE to reconsider the Decision in consideration of the following remarks.

In the final Office Action mailed by the Office on December 29, 2003, the Examiner rejected Claims 1-15 and 19, and allowed Claims 17, 18, 41-49, 51 and 52. Claims 17 and 18 were dependent on Claim 1, and read as follows:

Claim 17: The surf action game of Claim 1 wherein said control mechanism comprises a movable weight.

Claim 18: The surf action game of Claim 1 wherein said control mechanism comprises a magnet.

In the June 1 response, Applicant cancelled Claims 17 and 18, and amended Claim 1 to incorporate the limitations of Claims 17 and 18. By this action Claim 1 was amended into allowable form. As such, the application was placed into condition for allowance. No new issues were raised because the Examiner had already allowed Claims 17 and 18.

Since the SPE provided no reasoning for holding that Applicant’s June 1 response raised new issues, Applicant is left to conjecture as to what new issue may have been raised. Applicant notes that the amendment to Claim 1 used alternative language. More specifically, Applicant amended the claim as follows “. . . comprises a control mechanism comprising a movable weight or magnet adapted to . . . .” However, as noted in MPEP §2173.05(i)II., alternative phrases are acceptable in claims. Accordingly, the text added to Claim 1 was not objectionable, and instead placed Claim 1 in condition for allowance.

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Filed : January 24, 2002

Since the June 1 response was timely filed and placed the application in condition for allowance, Applicant respectfully requests that the Notice of Abandonment be withdrawn, the June 1 response be entered, and a Notice of Allowance be issued in the above-captioned application.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 12/29/04

By: 

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